

MOTOR VEHICLE EMISSIONS TESTING SERVICES

State of Washington
Department of General Administration
Office of State Procurement (OSP)



Contract 03910
A Washington State Contract
Under the Authority of
Chapter 43.19 RCW

1 OVERVIEW

1.1 CONTRACT SCOPE

The purpose of this Contract is to provide motor vehicle emissions testing services as needed throughout Washington State.

1.2 CONTRACT SCOPE AND MODIFICATIONS

The state reserves the right to modify this Contract in mutual agreement with the Contractor, so long as such modification is substantially within the scope of the original Solicitation. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

In addition, the Department of Ecology may modify operational aspects of the activity, such as revisions to the stream of payments and the scheduling of brochure distribution.

Such changes will be treated as administrative changes within the purview of the Department of Ecology and will require informal documentation rather than contract amendment. Such changes will not require approval by the Contract Administrator, as noted in Section 2.2.

1.3 RECITALS

The state of Washington, acting by and through The Department of General Administration, Office of State Procurement issued a Request For Proposal for the purpose of purchasing motor vehicle emissions testing services in accordance with its authority under Chapter 43.19 RCW.

1.4 ESTIMATED USAGE

Based on past usage, it is estimated that purchases over the initial term of the Contract will approximate \$50,000,000. This estimate was provided solely for the purpose of assisting Bidders in preparing their Response and not to be construed as a guarantee of income. The state of Washington does not represent or guarantee any minimum purchase.

1.5 CONTRACT TERM

The initial term of this Contract will be from the effective date of the contract award through June 30, 2017, with the option to extend for additional terms. Term extensions, subject to mutual agreement are an option through December 31, 2019, unless an emergency or special circumstance exists.

2 CONTRACT ADMINISTRATION

2.1 CONTRACT ADMINISTRATOR

The state shall appoint and maintain a Contract Administrator for this Contract who will provide oversight of the activities. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract.

2.2 CONTRACT REPRESENTATIVE

Active oversight of operations will be assigned to the Department of Ecology following award. Ecology will assign the Contract Representative and advise the OSP Contract Administrator of the individual named.

Through this position, Ecology will manage administrative changes such as directing the actual amount of the deposit is to be made to the General Fund account, approving personnel and schedule changes, redistribution of station hours, managing the production of printed material and providing the Contractor with instructions for the distribution of such materials or minor administrative changes that don't affect the scope of the contract.

The Contract Representative will also oversee any changes in Appendix A that will be communicated to the Contractor, as the term progresses, through Work Revisions. The Contract Administrator will be advised of these changes.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements,
2. Identify the Contractor's Representative, who will be the Contractor's principal point of contact,
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract; and
4. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.
5. Be bound by all written communications given to or received from the Contractor's Representative.

2.4 POST AWARD

The contractor will continue to work with Ecology to provide a schedule of meetings and workshops with Ecology to begin the planning of system modifications needed to perform this Contract. See page 26, section 4.1 of Attachment A, the RFP

2.5 CONTRACT MANAGEMENT

Upon award of this contract, the contractor shall review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.

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2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, changes to point of contact information may be updated informally as administrative changes.

Changes to the stream of payments to be sent to the General Fund will be amended through a Work Revisions issued by the Operations Manager at the Department of Ecology.

2.7 REPORTS

The Contractor shall provide reports and access to the test and fiscal data to Department of Ecology as described in Appendix B. In addition, the Contractor will provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>.

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

2.8 OTHER REQUIRED REPORT(S)

Other required reports will be designed and approved by the parties by mutual agreement.

2.9 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall maintain registration in the Contractor registration system, Washington's Electronic Business Solution (WEBS) www.ga.wa.gov/webs,

2.10 TRANSFER OF AUTHORITY

In the event that the authority of GA is withdrawn by operation of law or otherwise, and that authority is transferred and vested in a successor Washington State government entity, with written notice from an authorized agency of the state of Washington, this Agreement may be assigned to such successor Washington State government entity. The assignment of this Agreement under the aforementioned conditions shall not operate to relieve the parties of their duties and/or obligations hereunder.

3 PRICING

3.1 PRICE ESTABLISHMENT

The price for this activity has been established at \$12.00 per test and is not subject to negotiation. It is firm and fixed for the duration of the Contract.

3.2 NO ADDITIONAL CHARGES

No additional charges by the Contractor will be allowed.

4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

4.1 HOURS OF LABOR AND WAGES

All Lane Operators' work schedules shall be set at least one week in advance, and guaranteed a minimum of 80 hours a month. After ninety days of employment a Part-Time Lane Operator may choose to be only available for work on an on-call or limited basis such as Saturdays only. The wage for Lane Operators shall be at least two dollars (\$2.00) above the Washington State minimum wage. The compensation of a testing location manager and assistant manager shall be at least four dollar (\$4.00) above the Washington State minimum wage.

4.2 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all equipment and services necessary to perform Contractual requirements. Care exercised in performing Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended.

5 DELIVERY REQUIREMENTS

5.1 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT

If, in the sole judgment of the Contract Administrator, any item is determined not to be an equal, the Purchaser may take any or all of the following actions:

1. the service may be rejected and a retest ordered at Contractor's expense;
2. the contract may be terminated without liability to the state of Washington

5.2 INSPECTION AND TESTING

The state reserves the right to inspect any premises and to review suitability for public use.

5.3 STANDARD OF PERFORMANCE AND ACCEPTANCE TESTING

The Contractor will develop a testing and data handling system that uses software and hardware proposed and awarded in the RFP process. All software and testing equipment used by the Contractor or provided the Authorized Testers and modifications must be approved by Ecology prior to their use.

Within a period mutually agreed upon by the parties, the Contractor will demonstrate that their Washington testing and data handling system works properly. After July 1, 2012, unless otherwise approved by Ecology any proposed modifications will first be installed at one or more testing locations for Ecology's testing and approval prior to further installation.

5.4 PRE-IMPLEMENTATION REQUIREMENTS

The Contractor will complete several requirements in a pre-implementation phase. These will be finalized in conjunction with Department of Ecology and will consist of:

- The Authorized Testers Suite
 - Inspector Training for Authorized Testers
 - Program for Authorized Testers
 - Engagement Agreement Authorized Testers
 - Station Site Evaluation and Formula
- Revisions to Project Plan

These materials will be completed in the early stages of implementation and if necessary will be added or clarified through an amendment

6 PAYMENT

6.1 TAXES, FEES AND LICENSES

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay state of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes.

Department of Revenue Registration for Out-of-State Contractors:

Upon award, and prior to commencing performance, Contractors from out-of-state must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193. You may call the Department of Revenue at 800-647-7706 for additional information.

Fees/Licenses:

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations, fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

6.2 MINORITY AND WOMEN'S BUSINESS (MWBE) PARTICIPATION

If the Contractor is a certified Washington MWBE, with each invoice for payment and within thirty (30) days of Purchaser's request, Contractor shall provide Purchaser an *Affidavit of Amounts Paid*. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Retention of Records** section.

6.3 AUDITS

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

7 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to Department of Ecology, or any of its officers, or any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or service quality assurance under this Contract.

8 INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

8.2 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) years following the date of last test.

At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the state, personnel duly authorized by the state, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.3 PROPRIETARY OR CONFIDENTIAL INFORMATION

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, the state shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the state will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the State will release the requested information on the date specified.

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The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as the state retains Contractor's information in the records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

8.4 OWNERSHIP/RIGHTS IN DATA

Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, databases, documents, pamphlets, tapes, to the extent provided by law.

Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

Nothing about this section shall imply any ownership of the software or proprietary systems employed by the Contractor. This entire section secures the state's right to retain ownership of the data obtained in the testing of vehicles in the Washington State emissions monitoring program.

If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to the state the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

Contractor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.

Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

9 GENERAL PROVISIONS

9.1 GOVERNING LAW/VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.2 SEVERABILITY

Severability: If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

9.3 SURVIVORSHIP

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

9.4 INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

9.5 IMMUNITY AND HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

9.6 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the state of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

9.7 INSURANCE

General Requirements:

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the state of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

Specific Requirements:

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The state of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the state of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

Business Auto Policy (BAP):

In the event that services delivered pursuant to this Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the state of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Additional Insurance Provisions:

All above insurance policies shall include, but not be limited to, the following provisions:

Additional Insured:

The state of Washington and all authorized Purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of Policy(ies) Cancellation/Non-renewal:

Cancellation for Non-payment to Premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee upon cancellation. Written notice shall include the affected Contract reference number.

Identification:

Policy(ies) and Certificates of Insurance shall include the affected Contract reference number.

Insurance Carrier Rating:

The insurance required above shall be issued by an insurance company authorized to do business within the state of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the state of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement.

If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC .

Excess Coverage:

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

Limit Adjustments:

The state reserves the right to increase or decrease limits as appropriate.

9.8 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the state may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

9.9 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the state of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless State and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.10 WAIVER

Failure or delay of the State or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the State's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the State or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the State or Purchaser of any existing or future right and/or remedy available by law.

10 DISPUTES AND REMEDIES

10.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between the State or the Purchaser and Contractor and it cannot be resolved between the parties through the normal problem escalation processes, either party may initiate the dispute resolution procedure provided herein. The dispute shall be handled by a Dispute Resolution Panel in the following manner. Each party to this Contract shall appoint one member to the Panel. These two appointed members shall jointly appoint an additional member. The Dispute Resolution Panel shall review the facts, Contract terms and applicable statutes and rules and make a determination of the dispute as quickly as reasonably possible. The determination of the Dispute Resolution Panel shall be final and binding on the parties hereto.

All Parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

In the event a bona fide dispute concerning a question of fact arises between State or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

10.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state, the State may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative.

Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

10.3 FORCE MAJEURE

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The State reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

10.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

10.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, State nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, nor the State, nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the State or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the State or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the State or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

11 CONTRACT TERMINATION

11.1 MATERIAL BREACH

A Contractor may be Terminated for Cause by the State, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition.

Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;

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4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

11.2 OPPORTUNITY TO CURE:

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the State may issue a written cure notice. The Contractor may have a period of time in which to cure. The State is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the State. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the State may do any one or more of the following:

1. Exercise any remedy provided by law
2. Terminate this Contract and any related Contracts or portions thereof

Procure replacements and impose damages as set forth elsewhere in this Contract

1. Impose actual or liquidated damages
2. Suspend or bar Contractor from receiving future Solicitations or other opportunities
3. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract

11.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole.

The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the State shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The rights and remedies of the State and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

11.4 TERMINATION FOR CONFLICT OF INTEREST

State may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the State and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.5 TERMINATION BY MUTUAL AGREEMENT

The State and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

12 CONTRACT EXECUTION

12.1 PARTIES

This Contract is entered into by and between the state of Washington, acting by and through the Department of General Administration, Office of State Procurement, an agency of Washington State government located at 210 11th Ave. SW, Room 201, Olympia, WA 98504, and Applus Technologies, a corporation licensed to conduct business in the state of Washington, with its principal offices located at *444 North Michigan Ave, Suite 1110, Chicago IL 60611* for the purpose of providing *Motor Vehicle Emissions Testing Services*.

12.2 ENTIRE AGREEMENT

This Contract document, all subsequently issued amendments, the Contractor's Proposal, and all named attachments shall comprise the agreement between the State and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party.

Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

1. The State's Solicitation document 03910 with all attachments and exhibits, and all amendments thereto
2. Contractor's response to the Solicitation 03910 dated; January 19, 2011, with all attachments and exhibits,
3. A new Attachment I, which is a Summary of Revisions to the Contractor's submitted Letter of Proposal. These changes, the result of negotiation, now appear in this Contract document,

Order of Precedence

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations
2. Mutually agreed written amendments to this Contract
3. Award Letter
4. This Contract, Number 03910
5. The State's Solicitation document with all attachments and exhibits, and all amendments thereto
6. Contractor's response to the Solicitation
7. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any federal or state of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid *certified mail, return receipt requested, via facsimile or by electronic mail*, to the parties at the addresses *and fax numbers, e-mail addresses* provided in this section.

For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an no less than if it were in paper form.

03910 Motor Vehicle Emissions Testing Services Contract

Notices shall be sent to:

The Contractor at:	The State at:
Applus Technologies, Inc.	State of Washington Department of General Administration Office of State Procurement
Attn: Program Manager	Attn: Tariq Ohab
PO Box 58747	210 11 th Ave SW Room 201
Seattle, WA 98138	Olympia, WA 98504
Phone: 253-395-1222	Phone: 360-902-7412
E-mail: ahagerty@applustech.com	E-mail: tariq.ohab@ga.wa.gov
With Copy to:	
Darrin Greene, Executive Vice President	
Applus Technologies, Inc.	
444 N. Michigan Ave, Suite 1110	
Chicago, IL 60611	
Phone: 312-752-6441	
Email: dgreene@applustech.com	
And	
Frida Ramos, Senior Attorney	
Applus Technologies, Inc.	
444 N. Michigan Ave, Suite 1110	
Chicago, IL 60611	
Email: framos@applustech.com	

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or State, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process.

Contractor and State further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

12.5 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the State or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.



12.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

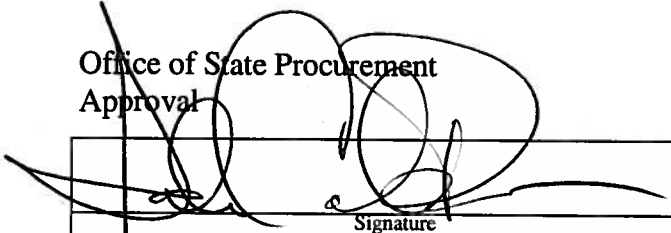
03910 Motor Vehicle Emissions Testing Services Contract

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 19TH day of October, 2011.

Approved		Approved
State of Washington Department of General Administration Office of State Procurement		Applus Technologies, Inc.
		
Signature		Signature
Tariq Ohab		Darrin S. Greene
Print or Type Name	Date	Print or Type Name
		10/19/11
Procurement Coordinator		Executive Vice President
Title		Title

Office of State Procurement
Approval


Signature
Dale Colbert
Print or Type Name
10-19-11
Date
Procurement Unit Manager

